

United States District Court
Southern District of California

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 10-CR-4246 JM
) Status Hearing
BASAALY SAEED MOALIN,) Thursday, April 5, 2012
MOHAMED MOHAMED MOHAMUD,)
ISSA DOREH,)
AHMED NASIR TAALIL MOHAMUD,)
)
Defendants.)
_____)

Before the Honorable Jeffrey T. Miller
United States District Judge

Official Interpreter: Maryam Adbi, Registered Interpreter
Official Court Reporter: Debra M. Henson, CSR, RPR
U.S. Courthouse
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Record produced by stenographic reporter

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1 San Diego, California - Thursday, April 5, 2012

2 (Defendant Ahmed Nasir Taalil Mohamud is being assisted
3 by Somali interpreter Maryam Abdi.)

4 THE CLERK: Calling matter 1 on calendar,
5 10-CR-4246, USA versus Basaaly Saeed Moalin, Mohamed Mohamed
6 Mohamud, Issa Doreh, Ahmed Nasir Taalil Mohamud, set for
7 status hearing.

8 THE COURT: Counsel?

9 MR. COLE: Good morning, your Honor. William Cole
10 and Caroline Han for the United States.

11 MR. DRATEL: Good morning, your Honor. Joshua
12 Dratel and Alice Fontier for Basaaly Moalin, who is being led
13 to the jury box at this time.

14 MS. FONTIER: Good morning, your Honor.

15 MS. MORENO: Good morning, your Honor. Linda
16 Moreno on behalf of Mohamed Mohamud, who's in custody,
17 present in the courtroom.

18 MR. DURKIN: Tom Durkin on behalf of Ahmed Nasir
19 Taalil Mohamud, who is present and in custody.

20 MR. GHAPPOUR: Good morning, your Honor. Ahmed
21 Ghappour on behalf of Issa Doreh, who is present in custody.

22 THE COURT: All right. Thank you all. Let the
23 record -- that's fine, gentlemen, please be seated, and
24 welcome. Okay. This is set for status conference today, and
25 we have a few matters I think the defense wanted to discuss.

1 The government signed or submitted a statement of issues for
2 today's hearing indicating they had no matters to be
3 addressed at this point.

4 So looking at what's been submitted by counsel for
5 defendant Moalin, the first item here is a reference to
6 depositions pursuant to Rule 15, and there's a cryptic
7 passage here that there are multiple witnesses in Somalia who
8 are critical to the defense and cannot travel to the United
9 States. If there are any issues related to depositions or
10 discovery, I'm just going to defer all of those to the
11 magistrate judge, Judge Gallo; and so after today's hearing,
12 counsel can repair to Judge Gallo's chambers, and they can
13 accommodate you by setting up a status conference or some
14 kind of hearing date in the future where they can address any
15 such -- any such concerns. Judge Gallo is not in today, he's
16 out for approximately a week, out of the district, but his
17 staff is ready, willing, and able to receive you today if you
18 need to address deposition or other discovery issues.

19 The second matter indicates that the defendants
20 wish to identify exculpatory material that counsel believe
21 may be, well, exculpatory, which may be in the government's
22 possession. That's fine. Counsel may certainly advise me in
23 writing, as they've done already, and if there's any
24 additional information that needs to be provided, they can do
25 that. It is possible that in the future counsel and I may

1 sit down together in an ex parte setting, but that is unknown
2 at this time.

3 Okay. Moving on, there are -- there's a third item
4 here, that counsel -- wherein counsel are suggesting that
5 they are available should the Court have any questions with
6 respect to outstanding pretrial motions. Counsel, I
7 appreciate your offer. At this time I do not have any
8 questions concerning outstanding pretrial motions.

9 I will give you a little bit of a status update in
10 terms of my progress here. I do have the FISA materials in
11 my possession. They are voluminous -- let me put it that
12 way -- they are something on the order of 2,000 pages or
13 something approaching 2,000 pages. And so I am in the
14 process of reviewing those materials. The CIPA materials
15 have not yet been provided to me. I understand that they
16 will be forthcoming. So that kind of gives you a bit of a
17 head's up as to where I am in all of this.

18 So I have no further questions of counsel at this
19 time, but, once again, I do appreciate your gracious offer as
20 you've set it forth in the third item of your status report
21 here.

22 The fourth is also a contingent suggestion. It
23 reads, Also should the Court request an ex parte, in-camera
24 meeting with defense counsel to discuss materials submitted
25 by the government pursuant to Section 4 of CIPA and that

1 material's impact on the defense, defense counsel are
2 available. Once again, I appreciate your offer. At this
3 point -- I don't think at this point I could respond to it.

4 The fifth item here states that in addition,
5 defendants wish to apprise the Court of an issue with respect
6 to the interpreter who served as the Somali translator during
7 the most recent court appearance in the case. I'm certainly
8 happy to hear any concerns you may have there.

9 And then the sixth and last item indicates that
10 defendants wish to inform the Court of ongoing difficulties
11 in obtaining independent translations of the recorded
12 conversations.

13 So that pretty much sums up where things are from
14 my perspective right now, and it looks like items 5 and 6 may
15 need some attention at this point. Before we get to those
16 two items, anything from the government? Even though there
17 was nothing set forth as a concern nor a request in the
18 government's status report, Mr. Cole, anything to add?

19 MR. COLE: No, your Honor, we really -- we really
20 don't have any issues for today other than responding to what
21 the defense might have.

22 THE COURT: Okay. All right. If anyone would like
23 to be heard with respect to the fifth item, please.

24 MR. DRATEL: Your Honor, may I just briefly be
25 heard just on two other items just to give the Court some

1 more information?

2 THE COURT: Okay.

3 MR. DRATEL: One is on Rule 15, it was our -- and
4 we've talked to the government about this, and so we're
5 trying to do this in as efficient manner as possible, and
6 obviously we'll go to Magistrate Judge Gallo, but we wanted
7 to sort of propose to the Court and to the government just --
8 is that we will make a Rule 15 motion. We will identify the
9 witnesses as we make a decision as to whether they are worth
10 deposing or not, and so we'll try to do that on a rolling
11 basis, but also that we were projecting that we should set
12 aside -- when I say "we," I mean counsel -- just for
13 logistical purposes and because of the nature of making these
14 plans, perhaps August until -- you know, we alerted the
15 government that we think August would be an opportune time to
16 get these done, however many they are and to try to sort of
17 get everybody's calendar in order. And like I say, it's not
18 the Court obviously but counsel. And so we'll be making a
19 motion and supplementing with just the individual names as we
20 add to it.

21 And also with respect to exculpatory material, we
22 did receive some additional discovery from the government
23 late or -- either early this week or late last week, and that
24 I think includes some of it and perhaps all the material that
25 we earmarked, so we don't have anything to say today about

1 that.

2 The only other thing on FISA, your Honor, is that
3 2,000 pages; that's I think unfortunate. I think it's sort
4 of unfair to put that all on the Court. We're happy to
5 assist in regard to that. I think that's counsel's role, to
6 wade through that kind of material rather than make the Court
7 and staff do it. So that's where we are on that.

8 THE COURT: Okay. Very good. Thank you. Anyone
9 else have anything to add? Apparently not. Okay.

10 MR. DURKIN: Judge, did you want to discuss the
11 interpreter?

12 THE COURT: Well, yes. I think items 5 and 6 I
13 think are open to discussion at this point --

14 MR. DURKIN: The issue with --

15 THE COURT: -- if there are no other issues that
16 want -- that counsel needed to address before those two items
17 dealing with the interpreter and with any difficulty
18 concerning independent translations.

19 MR. DURKIN: The only thing I would add to what Mr.
20 Dratel said, unless I missed it --

21 THE COURT: Why don't you use the lectern and the
22 microphone there.

23 MR. DURKIN: The only thing I would add is we did
24 discuss with the government that we would attempt to take
25 those depositions in August; is that correct? We've notified

1 the government that we would attempt to have those
2 depositions taken in August.

3 MR. DRATEL: Yes, that's right.

4 MR. DURKIN: Maybe I missed that.

5 THE COURT: Okay.

6 MR. DURKIN: Judge, the interpreter issue is my
7 client's issue. My client is the only defendant who uses the
8 court interpreter, but he also does speak some English, and
9 he apprised me after the last hearing that he thought that
10 there were simply misinterpretation going on, and I don't
11 know how we resolve that because -- I'm sure how to --

12 THE COURT: How would he know?

13 MR. DURKIN: Well, that's what I'm saying. He
14 knows a little bit of English --

15 THE COURT: Well, I assume the other -- his
16 co-defendants know quite a bit of Somali, and your -- so they
17 may have a better ability, an enhanced ability, more so than
18 your client to understand what's being translated here, or
19 interpreted. And if your client is the only one who's
20 expressing any concern, it may be that his limited English is
21 perhaps getting in the way of his analysis here.

22 MS. MORENO: May I be heard on that issue, your
23 Honor?

24 THE COURT: Okay.

25 MS. MORENO: I've also been apprised by my client,

1 who does speak Somali and does speak English, although he
2 does not have the earphones that Mr. Durkin has, that when he
3 hears -- from his vantage point, he's been at different times
4 closer to the translator and further away -- that there have
5 been significant mistranslations and mistakes that she has
6 made in translation. So I can offer that for the Court's
7 consideration.

8 THE COURT: Okay. Well, it's my understanding that
9 we've been using certified Somali interpreters; am I correct
10 in that assumption? Anyone wish to chime in?

11 MR. COLE: Well, your Honor, I don't know. I know
12 the chief interpreter from -- for your -- from this Court is
13 the one who's been retaining the interpreter. I assume that
14 she's been retaining interpreters she feels are appropriate.
15 I of course don't have any ability to tell you if this is
16 good interpretation or not.

17 THE COURT: Okay.

18 MR. GHAPPOUR: Your Honor, if I may, my
19 understanding based on my conversations both with Ms. Moreno
20 and Mr. Durkin as well as my client is it's -- and it may
21 logically make more sense -- is that the Somali itself that's
22 being spoken doesn't sound correct. So irrespective of
23 whether or not the translation is correct, the Somali itself
24 isn't even what was described to me as it's not even Somali a
25 second language or even Somali as a third language; the

1 quality of the language being spoken in Somali is that low.
2 So irrespective of whether or not we can make a logical, you
3 know, connection between the translation, it's the quality of
4 the language itself that's not sufficient.

5 THE COURT: Okay. I'll look into this then and be
6 able to provide further information for you. How many
7 different -- I don't know -- I have not been keeping track
8 myself actually; I've just been assuming that each of the
9 Somali interpreters have been certified. Nothing has been
10 brought to my attention before today concerning any
11 difficulties. In any event, three of the four defendants,
12 that is, with the exception of Ahmed Mohamud, are not
13 requiring the services of a Somali interpreter; they're all
14 conversant in English, and as I say, this issue has not been
15 brought to my attention previously.

16 Are there any particular dialects or regional
17 variations of Somali that counsel may be aware of that might
18 be helpful to me as I look into this matter a bit?
19 Mr. Durkin, have you had an opportunity to address that or
20 look into that?

21 MR. DURKIN: I have not. Could I just speak
22 briefly with my client? There may be a simple answer.

23 THE COURT: Well, I don't want -- I don't want the
24 clients -- I don't want the defendants to be driving the --

25 MR. DURKIN: No, I understand.

1 THE COURT: -- the analysis here. I'm advised by
2 the court clerk that -- that is, the courtroom deputy -- that
3 we've had two different interpreters here, and they're --

4 MR. DURKIN: I believe that's correct, and that --

5 THE COURT: -- each are -- each are certified --

6 MR. DURKIN: I there was a male --

7 THE COURT: -- and that our interpreters office --

8 MR. DURKIN: -- interpreter before. The only thing
9 I do know, Judge, is that my client is from the north, and I
10 know there's a difference between people that come -- in
11 dialect in people that come from the north versus the south,
12 and that --

13 THE COURT: Are there separate dialects to your
14 knowledge?

15 MR. DURKIN: I hesitate to call them dialects, but
16 I --

17 THE COURT: Are there variations in --

18 MR. DURKIN: I think there is. I think they're a
19 different dialect.

20 THE COURT: But your client hasn't -- you haven't
21 had that conversation with your client yet? In other words,
22 he's not telling you he's from the north and he suspects that
23 the -- what he's hearing is perhaps a variation from the
24 south and therefore there might be a little bit of
25 difficulty --

1 MR. DURKIN: He did not --

2 THE COURT: -- or he hasn't given you any other
3 explanation as to --

4 MR. DURKIN: I didn't get into that kind of detail
5 with him, Judge.

6 THE COURT: Well, okay. Well, you can --

7 MR. DURKIN: I can try to do that.

8 THE COURT: -- you can do that when we're not
9 taking up time with other matters.

10 MR. DURKIN: Yes, sir.

11 THE COURT: But I'll look into that. And if we
12 have certified interpreters, then there's not too much more
13 the Court can do other than look into the issue with the
14 interpreters, with our chief interpreter here, and see if
15 there's any way we can enhance the -- the interpreting
16 process for your particular client --

17 MR. DURKIN: That's fine.

18 THE COURT: -- Mr. Durkin.

19 MR. DURKIN: And I'll try to get more specific
20 information.

21 THE COURT: Okay. All right. That will help.
22 Anything that you can provide to us by way of whether there
23 are additional dialects or whether the language may vary from
24 region to region would be helpful in that regard. Okay. So
25 that's the issue with the interpreter; it relates just to

1 Mr. Durkin's client, and I'll look into that. Okay. Then we
2 have some issue or concern regarding independent translations
3 of recorded conversations. Who would like to speak to that?

4 MS. MORENO: Yes, your Honor. And it touches --

5 THE COURT: Ms. Moreno, please.

6 MS. MORENO: Thank you, your Honor, if I may. And
7 it touches upon what -- some of the discussion that the Court
8 has just had. It has been an arduous effort to get
9 translators who, one, are certified; and, two, who have no
10 conflict, meaning that the -- probably every
11 translator/interpreter that I've contacted has worked for the
12 military, the State Department, the Department of Justice,
13 and many apparently are knowledgeable about this case, have
14 had contacts with witnesses around the country, and so we
15 can't -- we can't use them. I'm only apprising the Court
16 that we are -- we are trying to resolve this situation, but
17 we thought it was important to apprise the Court of the
18 efforts that we're making in this regard given the fact that
19 we have 1800 phone calls. We're not talking about
20 translating all 1800 phone calls, but what we are talking
21 about is certainly not only the universe of calls that the
22 government has indicated it's going to use at the trial; I
23 would say the overwhelming majority of those phone calls are
24 all extremely edited, one minute out of a ten-minute phone
25 call, so of course we would looking at the entire phone call.

1 This takes a lot of effort and time, and it's --

2 THE COURT: When you say they've been edited, you
3 mean the translations that you've received the government has
4 been good enough to provide are heavily edited; is that what
5 you're saying?

6 MS. MORENO: Edited in the -- in the sense that
7 some of the translations are lifted from the middle of a
8 conversation, some of the translated transcripts are -- begin
9 in the middle of a sentence and end in another sentence.

10 THE COURT: Understood. So you need to have the
11 entire conversation --

12 MS. MORENO: Exactly, your Honor. So we just
13 wanted to apprise the Court of the ongoing efforts that the
14 defense is making in this regard and the difficulties that
15 we're encountering.

16 THE COURT: How much headway have you made thus
17 far?

18 MS. MORENO: Yes, we did actually -- sorry -- we
19 had a gentleman who -- actually he's I think familiar to this
20 Court -- got some of our work and became ill and had to drop
21 out and so we had to start the process all over again.
22 Apparently he's --

23 THE COURT: You mean the process of trying to
24 obtain someone?

25 MS. MORENO: Yes. And so I currently have a

1 handful of resumes, all of whom indicate on the resumes that
2 these translators have worked for the State Department and
3 the Department of Justice, and so in my interviews, I'm
4 trying to vet them and send them at least information to see
5 if they have in any way touched this case.

6 THE COURT: Okay. And in terms of what's been
7 provided to you, the conversations that have been provided to
8 you and identified as pertinent by the government -- I think
9 there are a couple of hundred that fall into that category,
10 and then you have obviously many hundred additional
11 conversations that have been provided to you -- can you
12 quantify how far into that process you've gotten, 10 percent,
13 40 percent, 80 percent? I mean is that --

14 MS. MORENO: It's very, very difficult, your Honor.

15 THE COURT: All right. That's fine.

16 MS. MORENO: I'm very sorry.

17 THE COURT: Is there a division of labor that's
18 been set up so that you're kind of sharing --

19 MS. MORENO: We are.

20 THE COURT: -- the burden.

21 MS. MORENO: We are a real team in that respect,
22 and certainly all of our clients have been working
23 assiduously in that regard in helping us. But at the end of
24 the day, we have to find the certified
25 translators/interpreters we will be able to use with respect

1 to these telephone calls in the context of a trial that could
2 be potential witnesses.

3 THE COURT: I know there have been many cases
4 involving defendants with Somalia as their country of origin
5 brought and then even tried throughout the country, and I
6 would imagine there have been translators, and perhaps many
7 translators, who have provided assistance to defense counsel
8 in connection with many of these matters. I assume, given
9 the national scope of the collective practices of all of you,
10 you have access to these individuals, their names and contact
11 information. Are you saying that you've really delved deeply
12 into that list and almost exhausted it without coming up with
13 people?

14 MS. MORENO: Your Honor, I'm not saying that I've
15 exhausted it; I would be before the Court to say that, but
16 I'm not saying that. We are just giving you a status report.
17 In fact, I have reached out to two of the translators who
18 worked on the Minnesota cases for the defense and now they're
19 working with the Department of Justice and have exclusive
20 contracts and won't work with the defense. So there are a
21 variety and host of special problems with respect to these
22 cases. Even though one could say that there are a lot of
23 cases involving Somalis in the country, really the pool of
24 certified Somali translators is excruciatingly small, your
25 Honor, and that is what we're having to deal with, but we --

1 we continue on.

2 THE COURT: I think the issue of a conflict is a
3 two-way street. I'm just trying to think out loud here a
4 little bit. Maybe I'm off base here, but once you have a --
5 have a translator working for the defense community in one or
6 more of these cases, it presents perhaps a conflict for the
7 government to engage that individual. Mr. Cole, do you have
8 any such limitations?

9 MR. COLE: Well, the only thing I would add -- I
10 can't add a lot to this discussion other than to mention that
11 we have only used to my knowledge -- only linguists that we
12 have used in our case are FBI employees or contractors,
13 people who literally work for the FBI, and we have used this
14 local linguist a few times to do some work for us --

15 THE COURT: You say FBI or contractors.

16 MR. COLE: When I say --

17 THE COURT: The contractor realm can be very large.

18 MR. COLE: I don't even know why I said
19 "contractors" other than that. I guess I just suddenly
20 realized I don't know what all their employment relationship
21 is exactly with the FBI, but my understanding is that they
22 are FBI linguists, captive FBI linguists. We've only gone to
23 the FBI for their linguists that are on their staff to
24 translate this case. We haven't gone to the State
25 Department, we haven't gone to the military.

1 Now, it may be -- I mean I appreciate the defense
2 vetting to make sure they don't run into some -- some buzz
3 saw with some conflict issue because it could be that someone
4 in the State Department or military knows about this case,
5 but we have not gone to those sources for translations in
6 this case; we've gone only to the FBI's language specialists,
7 and we haven't hired outside people or contracted outside
8 people. Other than that, we did use this interpreter earlier
9 on before she became a court interpreter, to do some work --
10 not any translations we're relying on in court, not
11 anything -- we're not relying on anything that this
12 interpreter did for presentation in court, but she help us
13 with some matters early on in our case, our investigation for
14 prosecution. So I just want to let the Court and the defense
15 know that. I don't doubt it is difficult to find
16 interpreters, but we have not gone out and gobbled up people
17 outside --

18 THE COURT: We're just talking about translators at
19 this point, not necessarily interpreters.

20 MR. COLE: I'm sorry.

21 THE COURT: There's a difference.

22 MR. COLE: Translators, translators, yes. We
23 haven't gone out and gobbled up any translators other than
24 those who work for the FBI.

25 THE COURT: Okay.

1 MS. MORENO: Okay. That's helpful.

2 THE COURT: So I think I'm hearing the government's
3 not out on a -- some kind of a, you know, a goal here or
4 program to co-opt all translators throughout the entire
5 country.

6 MS. MORENO: You mean I don't get to use that
7 argument anymore, your Honor?

8 THE COURT: I'm sorry?

9 MS. MORENO: I don't get to use that argument
10 anymore?

11 THE COURT: Well, no, I can appreciate that you may
12 have some difficulties locating people, but I'm assuming that
13 those translators with whom defense counsel have worked in
14 other cases would I think perhaps by government protocol or
15 policy be disqualified thereafter from translating for the
16 government because of the same types of conflict principles.
17 I thought I heard that earlier on in the case that once an
18 independent expert or translator works with the defense in a
19 similar case, that they're not brought on by the government.

20 MR. COLE: I think, your Honor, that might be true
21 if the person worked on this case, but I don't think the fact
22 that somebody's worked for the defense -- defense bar would
23 mean they can't work for the government or vice versa.

24 THE COURT: All right.

25 MR. COLE: And we -- I think the big problem comes

1 into the areas, as counsel mentioned, that we did not
2 translate -- because we also have only limited resources.
3 Even though we had access to the FBI linguists, there aren't
4 as many of those as we'd like, and so that's why we didn't
5 translate entire phone calls where they're chatting about
6 this, that, or the other. And so I understand why they would
7 want to know what those portions of the calls say.

8 As to the portions we have translated, we are more
9 than happy to sit down with the defense counsel, and if they
10 think there are things that need to be corrected in those,
11 even if they haven't used a certified translator, if they
12 have somebody who they want -- if they want our translator to
13 take a second look at a sentence based on something their
14 client tells them about the sentence, for example, we're
15 happy to try to work out issues with our translations if
16 there are any and to stipulate to changes if it's
17 appropriate.

18 THE COURT: Think it was the vice versa reference
19 in your -- at the beginning of your statement here that
20 intrigued me a little bit. So you were suggesting that if
21 there were a translator, for example, who had worked on
22 behalf of the defense in another case, that would not be a
23 disqualifying feature for the government, so my -- one
24 suggestion I have is if you're aware of translators who the
25 government has deemed competent and helpful in past cases

1 with the government but not on this case, you may be able to
2 provide a list, a short list, of those individuals so that
3 the defense community here can have ready access to them.
4 Obviously, they haven't worked on this case, and I would
5 assume that the reciprocity that you suggested in your
6 earlier statement would be something that defense counsel
7 would be happy to embrace; is that correct, Ms. Moreno?

8 MS. MORENO: Absolutely, your Honor. And it also
9 would be helpful if we could be provided a list of the names
10 of the translators that worked on the translations of these
11 transcripts. If you could give us those names, that would be
12 very helpful in terms of our continuing endeavor.

13 THE COURT: All right. Well, I tell you what -- go
14 ahead.

15 MR. COLE: All I was going to say is I'd be happy
16 to -- I can go back to our counterterrorism section in
17 Washington, DC and ask for their collective experience around
18 the country. Be happy to provide anything we can come up
19 with in terms of cases they've seen where the other side has
20 found a translator. I'll get those names to the defense.
21 I'm not as sanguine about providing them with the names of
22 our FBI language specialists. There's reasons for that that
23 I could address with the Court separately, but --

24 THE COURT: Anything you can do could be helpful to
25 move the process along.

1 MR. COLE: Right.

2 THE COURT: We're dealing with a lot of material in
3 this case. Obviously the parties have a lot of material they
4 need to -- they need to review and master, the Court as well.
5 So I think that's a positive development here, and any
6 issues -- seeing as how you're going to -- we're going to
7 bring Judge Gallo into the picture here as a result of the
8 reference to Rule 15 and depositions perhaps being taken, and
9 perhaps Judge Gallo, to the extent he may be available in the
10 future, can deal with these types of issues as well; they do
11 more or less relate indirectly to discovery.

12 Before we leave these two areas we've been
13 discussing here, the interpreter for Mr. Durkin's client and
14 translators, may I have the name of the interpreter who's
15 assisting -- who's assisting us today? I think she was on
16 our last -- at our last hearing as well. Would you please
17 state your name and spell your name for us.

18 THE INTERPRETER: Yes, Maryam, last name A-b-d-i.

19 THE COURT: I'm sorry. If you could speak louder.

20 THE INTERPRETER: Maryam, last name A-b-d-i.

21 THE COURT: Okay. And it's my understanding you
22 are certified; is that correct?

23 THE INTERPRETER: Registered.

24 THE COURT: Registered? All right. What is the
25 difference, as far as you're concerned, being certified and

1 registered?

2 THE INTERPRETER: Well, with the courts, the
3 registration means that you go through the English portion of
4 the exam. I do work also as a -- as a contractor with
5 several governmental agencies. With that you are required to
6 also take the examination in Somali and in English, so with
7 other agencies I did have to go through the process. But
8 with the court system here in San Diego, only the English
9 portion is available as of this year.

10 THE COURT: Okay. That's helpful. Thank you. And
11 the head of our interpreters here, our court interpreters
12 office, has all of your contact information obviously; is
13 that correct?

14 THE INTERPRETER: Yes.

15 THE COURT: All right. Very good. Thank you.
16 Thank you for your assistance; we do appreciate it.

17 THE INTERPRETER: Thank you.

18 THE COURT: Okay. Counsel, anything further?

19 MR. DRATEL: Yes, your Honor, if I may. Something
20 that just came up this morning, which is the dramatic
21 difference in getting to the courtroom today, which is of
22 significant concern to us on the defense, which is the -- I
23 know that security is obviously a sensitive issue, but it's
24 at a level outside the courtroom that I think is unwarranted
25 given the fact that we've been here so many times before.

1 And just looking forward to what it's going to mean to a jury
2 I think is overwhelming in that regard and just
3 extraordinarily prejudicial to the defendants before we even
4 start the case in a way that we'll never be able to overcome.

5 THE COURT: Well, I really don't have any -- do you
6 care to be --

7 MR. DRATEL: Oh, yeah. There's a magnetometer
8 outside the courtroom.

9 THE COURT: I'm sorry?

10 MR. DRATEL: There's a magnetometer outside the
11 courtroom for spectators to come in, and I just -- it hasn't
12 been there before. I think downstairs the line was
13 significantly longer, and the process of getting through even
14 the magnetometer downstairs was materially different than it
15 was before, and, you know, it's just -- it's just a signal to
16 a jury that this is a different kind of case with different
17 kind of defendants, and it's just --

18 THE COURT: Well, I think we're getting way ahead
19 of ourselves at this point. I can allay your concern --
20 well, perhaps not -- but at least I can address the comment
21 you've made by indicating we've had magnetometers outside our
22 courtrooms in many cases in the past; I've had them in
23 several cases I've had in the past having nothing to do with
24 national security issues, but other security issues as well.
25 And I will -- I take your concern to heart, and I'll look

1 into that and I'll see why there's been some kind of a
2 change, if there has been. I have no reason to doubt what
3 you're telling me.

4 MR. DRATEL: And, your Honor, also just two things.
5 One is that, you know, there's not even -- I don't know of
6 the types of cases that magnetometers been outside the court
7 before, but here we haven't had any allegations of violence
8 by the defendants, any allegations of anything in the United
9 States, any of that.

10 Also, there was one other difference, which is --
11 and I'm not suggesting that -- again, this is, you know, a
12 security issue in terms of -- it's more about the appearances
13 of it and when it's done -- is that there was a dog that they
14 had to go through the courtroom before I guess the marshals,
15 which I'm just very sensitive to that being done in a way
16 that any you know, ultimately when we're down the road that
17 any juror could see, you know. That's just a whole other
18 level of alert for a jury that's unnecessary in this case and
19 prejudicial. Thank you.

20 THE COURT: Okay. Thank you. Any other issues
21 that need to be addressed before we adjourn?

22 MR. DRATEL: Yes.

23 THE COURT: Mr. Dratel?

24 MR. DRATEL: Sorry. Your Honor, we talked among us
25 on the defense side about perhaps coming back in the

1 beginning of July, at which point we might want to set
2 in-limine schedules and some of the other things that were
3 not recalibrated when we changed the trial date.

4 THE COURT: I think if it -- I think if all we're
5 looking at is the setting of dates for in limines and perhaps
6 other status conferences, I'm going to let that go and
7 probably set that in an order. There will be an order
8 forthcoming obviously once I complete the review of FISA,
9 assuming that there's no need to bring counsel into the mix
10 under 1806 (f). I haven't prejudged that issue at all, and
11 I've been through the papers on that, that is, your papers on
12 that. But in my view, this status conference would have been
13 better put off, trailed for a period of time. I had my staff
14 contact defense counsel, as you know, with the suggestion
15 that we do that, especially in light where I am vis-a-vis the
16 review of materials here. But counsel did want to come in,
17 and so I certainly did not want to discourage them from
18 coming in, but in my view, this is a hearing that could have
19 been put off.

20 So having a status conference just for the sake of
21 having a status conference I'm not too concerned about.
22 Because Judge Gallo is going to become involved with
23 discovery -- and I am requesting that counsel see Judge
24 Gallo's staff after we're done here -- I don't know that we
25 need to get involved with discovery issues in the immediate

1 future. I think it's better if, as I'm going through
2 materials and we're getting a little farther into the case,
3 that I set a status conference, if necessary, in an order,
4 and then certainly I'll be able to address the setting of a
5 date for motions in limine and also a briefing schedule for
6 motions in limine as well, keeping in mind, obviously, the
7 October date and making every effort to maintain that as a
8 firm date here. Okay?

9 MR. DRATEL: All right. Thank you, your Honor.

10 THE COURT: Okay. Very good. Anything further
11 from defense counsel?

12 MS. MORENO: I'm sorry, your Honor. And would the
13 briefing schedule also include a questionnaire, voir dire
14 protocols, et cetera? Would that be --

15 THE COURT: You know, if appropriate. I don't know
16 that those are the kinds of things that we need to address in
17 a substantive order just by way of setting up a date or
18 further dates or the remaining dates in the case before we
19 proceed to trial. I think at some point a further status
20 conference will be helpful, but I don't know that I'm ready
21 to set it right now, and I think that -- I think that at that
22 status conference we can address issues such as a
23 questionnaire, if we're going to use one and, if so, what
24 areas should be delved into; I assume that I'd be open to
25 each side submitting an exemplar of a questionnaire that they

1 would wish to have utilized in the case, as well as other
2 preliminaries.

3 So what I'm trying to get away from is just
4 automatically setting status conferences where not an awful
5 lot of business is being conducted, okay? It may well be
6 that we have another one within a few months. Let's just see
7 how things shake out. Okay. Anything from the government
8 before we adjourn? Mr. Cole?

9 MR. COLE: No, your Honor. Will the court's staff,
10 before a further order comes out, just check us with dates
11 because summer's coming, and I just want to make sure we
12 don't inadvertently get dates that we're all going to be out
13 of the district or something.

14 THE COURT: Well, you know, what might be helpful
15 is if counsel -- I was going to say if counsel advise us as
16 to any dates that they're not going to be available. I mean
17 if counsel are aware of other dates where they're, for
18 example, going to be taking a bit of time to themselves or
19 they're involved in trial work, other trials have been set
20 that certainly look like they're going to proceed, that would
21 be helpful in terms of setting any further dates here. I
22 just don't want to bring you all back in. I know, you know,
23 that there are time and expense factors, and to bring you
24 back just to set dates I think would be a bit
25 counterproductive; I just don't want to impose that burden

1 particularly on the defense community. So if you can perhaps
2 confer amongst yourselves as to your availability, for
3 example, for a date for motions in limine, it might be
4 helpful to get all motions in limine resolved no later than
5 two weeks before your trial date. If you want to set the
6 date for motions in limine within a two- to four-week window
7 before your trial date, that's probably the better time to do
8 it. Come up with a suggested date or two for motions in
9 limine.

10 Typically when it comes to motions in limine, I
11 like to have at least a couple of weeks -- in a case like
12 this -- a couple of weeks to go over all the material myself,
13 so I'm looking at the completion of all briefing at least two
14 weeks before the date set for motions in limine. And then
15 you have three rounds of briefing; you have your motions that
16 are filed three weeks before that cutoff date, you have
17 opposition filed two weeks before that cutoff date, you have
18 any reply one week before the cutoff date, so you can even
19 work together on coming up with a schedule that you feel
20 would work for all of you. If not, I mean I'll be happy to
21 set a schedule a bit farther down the road.

22 Those are the things we're looking -- we're looking
23 at from this point forward. Obviously -- I know defense
24 counsel have suggested in their papers that it might be
25 appropriate to sit down with the Court. I haven't made that

1 determination at this point as to whether that would be
2 necessary. I'm still, as you know, at the beginning stages
3 of reviewing material here, so -- that's FISA material, not
4 even CIPA material, so that's pretty much where we are at
5 this point. Anything further from the defense or the
6 government then before we draw this to a close? Apparently
7 not.

8 Mr. Durkin, I will look into the issue of Somali
9 interpreters, and I'll think about how to address that with
10 you, whether that should be by letter or order or in some
11 other fashion.

12 MR. DURKIN: As will I.

13 THE COURT: If you have an opportunity to talk to
14 your -- talk to your client, that might be helpful as well.

15 MR. DURKIN: I'm assuming they're going to be
16 downstairs for a little while this morning.

17 THE COURT: Hopefully. I would ask if Mr. Durkin
18 can be accommodated by meeting his client for a brief period
19 of time to get this -- get a little bit more information,
20 that would be helpful to the Court. So let's proceed in that
21 fashion.

22 MR. DURKIN: Thank you.

23 THE COURT: All right. Very good. All right.

24 Thank you. Then we'll adjourn for today. Your pending -- I
25 don't have a -- I don't have a further date to set for you at

1 this point, but obviously we have many motions pending and
2 the case is designated as complex in any event, but we have
3 pending motions, and the Speedy Trial clock continues to be
4 tolled.

5 MR. DURKIN: No objection, your Honor.

6 THE COURT: All right. Thank you, counsel.

7 (The proceedings were concluded.)
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Certificate of Reporter

I hereby certify that I am a duly appointed, qualified, and acting Official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the mentioned cause on the date or dates listed on the title page of the transcript; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

Dated May 25, 2012 at San Diego, California.

/s/ Debra M. Henson (electronic)
Debra M. Henson
Official Court Reporter